INFORMATION LETTER

Not for Publication — NATIONAL CANNERS ASSOCIATION — For Members Only

No. 645 — Washington, D. C. — April 17, 1937

Association Gives No Opinions on Status of Individual Organizations Under the Robinson-Patman Act

From time to time during the past few months, statements have been made in the trade that counsel for the National Canners Association, acting for the Association, has passed upon the validity under the Robinson-Patman Act of brokerage payments to or other arrangements with identified organizations. Such statements are wholly without foundation. A number of general inquiries concerning the Robinson-Patman Act have been answered by the Association staff, in consultation with its counsel, pursuant to a resolution of the Board of Directors which precludes the answering of any question which would require a determination of the status of identified or identifiable buying or selling organizations, or which would require extensive correspondence or examination of all of the selling methods of particular canners. In addition, no questions have been or will be answered which might create any precedent which would be embarrassing to the Association. In this connection, the Association has not advanced or endorsed any particular interpretation among the several conflicting possible interpretations of the more controversial sections of the statute. Moreover, there has been no publication of any of the general replies to individual inquiries.

LABOR RELATIONS ACT UPHELD

Far Reaching Decisions in Five Cases Handed Down by Supreme Court

The constitutionality of the National Labor Relations Act was upheld by the Supreme Court of the United States in five far-reaching decisions rendered on April 12, 1937. This statute, sometimes known as the Wagner-Connery Labor Act, was passed by Congress on July 5, 1935, after much discussion as to its probable constitutionality. It guarantees to employees the right to organize in unions and to bargain collectively through representatives of their own choosing. Representatives selected for the purposes of collective bargaining by the majority of the employees of a plant are designated the exclusive representatives of all employees, and the employer is required to bargain collectively with such representatives. In addition, the Act declares it to be an unfair labor practice for an employer to interfere with the right of his employees to organize, or to discharge or discriminate against any employee because of union activities.

One of the fundamental objections to the constitutionality of this statute was its apparent attempt to regulate labor relations in manufacturing industries which, under earlier decisions of the Supreme Court, were not engaged in interstate commerce. The five cases decided on Monday, April 12th, involved an interstate bus line, a news-gathering agency, and three manufacturing concerns—a steel company, a clothing company, and an automobile trailer manufacturer. The decisions thus squarely sustained the right of Congress to regulate labor relations, not only in industries clearly interstate, but also in local manufacturing enterprises when labor relations in the latter industries bear such a close and substantial relation to interstate commerce as to constitute a burden or obstruction to such commerce.

In the *Associated Press* case, the National Labor Relations Board ordered the Associated Press to reinstate an employee who, as the Board had determined, had been dismissed for union activities. The Court found that the activities of the Associated Press in gathering news and distributing it by means of telephone, telegraph and messenger to its 1,350 members scattered throughout the United States constituted interstate commerce, and that the employment of an editorial writer bore a sufficiently close relation to such interstate commerce to enable Congress to regulate it. The Associated Press contended, however, that to require it to reinstate a member, whose opinions on important subjects were biased and colored, would abridge the freedom of the press and would thus be unconstitutional. The Court rejected this contention by pointing out that the Act merely prohibits discharge for union activities, and would not prevent the discharge of an employee who could not properly perform his duties because of bias. There was no showing that such a situation existed here. Four Justices, Mr. Justice Sutherland, Mr. Justice Van Devanter, Mr. Justice McReynolds, and Mr. Justice Butler, dissented from this decision on the ground that the Act does abridge the freedom of the press.

In the *Washington, Virginia and Maryland Coach Company* case, a bus company admittedly engaged in interstate commerce, contended that the Act was invalid as an attempt to regulate all industry whether interstate or not. The Court refuted this contention, and held that as applied to a company admittedly engaged in interstate commerce the Act was clearly constitutional. This decision was unanimous.

In a third case involving the *Jones and Laughlin Steel Corporation*, the Court was faced with a situation in which the employer was a manufacturing corporation. Past decisions of the Court, notably those in the *Schechter* case, involving the National Industrial Recovery Act, and the *Carter* case, involving the Guffey Coal Conservation Act, had held that manufacturing, mining and other local enterprises, did not constitute interstate commerce, and that labor relations in these industries did not so directly affect interstate commerce as to be subject to the regulatory powers of Congress. In the *Jones and Laughlin* case, the National Labor Relations Board ordered the corporation to refrain from discriminating against union members and to reinstate certain employees

who had been discharged because of union activities. The Court found that the corporation was a large steel manufacturing concern owning iron and coal mines and limestone quarries in various parts of the country, owning steamship and railroad lines and having large plants and warehouses in several different States. It found that the raw products were transported in interstate commerce to the factories and that after processing and fabrication approximately 75 per cent of the finished products were shipped in interstate commerce.

The corporation contended that the Act attempted to regulate all industry without any distinction as to its interstate or local character and that consequently the Act was void on its face. The Court held, however, that the Act regulated only those labor relations which affected interstate commerce by a tendency to burden or obstruct such commerce. Whether or not a particular attempted regulation exceeds the bounds of Congressional authority must be determined upon the facts of the particular case.

The corporation further contended that in this particular case its activities were not interstate in character and therefore not subject to regulation. On the other hand, the Government sought to distinguish the Court's earlier decisions defining the status of manufacturing on the theory that the business of the corporation here involved constituted such a "stream of commerce" as to be subject to Congressional action. The Court pointed out that—

> "The Congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a 'flow' of interstate or foreign commerce".

Even though the business of the particular corporation when viewed alone is intrastate and local, if its activities bear such a "close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions", Congress has the power to exercise this control. It is not the source of the obstruction but the effect that it has upon interstate commerce which is controlling.

Applying these principles to the present case, the Court found that labor relations of the Jones and Laughlin Corporation bore a close and substantial relation to interstate commerce, and concluded that:

> "The stoppage of those operations [of the steel manufacturing corporation] by industrial strikes would have a most serious effect upon interstate commerce. In view of respondent's far-flung activities it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic."

Relying on its decision of a few weeks ago in the *Virginian Railway* case involving the constitutionality of the Railway Labor Act of 1934, the Court rejected contentions that the Act constituted an unlawful interference with the business of the corporation. It pointed out that the Act did not compel the employer to enter into any agreements with the union, but merely to negotiate with it. Nor does it interfere with his right to hire and discharge as he sees fit. It merely prevents a discharge because of union activities alone.

In the other two decisions, the Court had before it cases involving the Fruehauf Trailer Company, the country's largest manufacturer of automobile trailers, and the Friedman-Harry Marks Clothing Company, a small clothing manufacturer of Richmond, Va. In both of these cases it was demonstrated that a large portion of the raw materials were transported in interstate commerce before manufacture and that an equally large percentage of the finished products were shipped in interstate commerce. The Court concluded that labor relations in these two industries bore a sufficiently close and substantial relation to interstate commerce to subject them to Congressional regulation, and the action of the National Labor Relations Board in ordering reinstatement of discharged employees was sustained on the authority of the *Jones and Laughlin* case discussed above.

In all three of these cases involving manufacturing companies, Mr. Justices Sutherland, Van Devanter, McReynolds and Butler dissented. In a dissenting opinion rendered by Mr. Justice McReynolds, they indicated their inability to find a sufficient relation between manufacturing operations and interstate commerce, and concluded that the Act was invalid as applied to these three companies.

INTENDED BEAN AND CORN ACREAGE

Bureau of Agricultural Economics Issues Report on Two Canning Crops

Reports on intended acreage of snap beans and sweet corn for canning have been issued by the U. S. Bureau of Agricultural Economics, indicating an increase of 3.8 per cent in bean and 1.4 per cent in corn acreage. As pointed out by the Bureau, these figures are based upon reports from representative canners whose intentions, for purposes of making estimates, are assumed to be typical of all bean and corn canners. As the intended acreages may be modified before plantings are actually made, they are not to be considered as final estimates of the acreage planted for the coming season, which may be greater or less, depending upon changes canners may make in their plans between now and planting time. The reports as issued by the Bureau follow:

Snap Beans

Indications of the acreage of snap beans which canners intend to contract or plant for their 1937 requirements point to an increase of 3.8 per cent more than was planted in 1936. If the plans of nearly 200 canners who reported late in March can be assumed to be typical of the acreage intentions of all snap bean canners, and if these plans materialize, the 1937 plantings will total about 58,050 acres, compared with 55,910 acres estimated to have been planted in 1936.

During recent years the abandonment of planted acreage as a result of unfavorable weather and growing conditions has varied as follows: 1930, 2.1 per cent; 1931, 10.2 per cent; 1932, 0.1 per cent; 1933, 4.9 per cent; 1934, 5.8 per cent; 1935, 4.1 per cent, and 1936, 13.7 per cent. Average abandonment for the 7 years (1930-36) was 5.8 per cent.

If about 6 per cent abandonment of planted acreage is assumed for 1937, a planting of 58,050 acres would yield about 54,600 acres for harvest. The average yield obtained from the harvested acreage the past seven years has ranged from 1.15 tons to 1.64 tons per acre.

Analyzing production and pack possibilities in 1937, if 54,600 acres yield 1.64 tons, under favorable conditions such as prevailed in 1935, a production of about 89,500 tons would result. With relatively unfavorable conditions such as prevailed in 1930, when yields of 1.15 tons were obtained, a

production of about 62,800 tons may be obtained. If, however, average conditions prevail throughout the 1937 growing season and a yield of 1.42 tons per acre, which is about in line with average yields for the 7-year (1930-36) period, is produced for harvest, the 54,600 acres in prospect may produce about 77,500 tons.

From past relationships between estimated tonnage of snap beans and size of pack, the above-average crop of 89,500 tons could be expected to make a pack of about 8,000,000 cases of 24 No. 2 cans, and the below-average crop of 62,800 tons, a pack of 5,600,000 cases. The pack to be expected from 54,600 acres with average yields may be about 7,000,000 cases, which is slightly below the 1935 pack. The pack in 1936 was about 6,400,000 cases containing 24 No. 2 cans.

The following table shows, by geographical regions, the planted acreages which would result if late March intentions to contract and plant in 1937, as expressed by representative canners, are carried out.

State	Planted Acreage		Intended in 1937	
	1935	1936	As per cent of 1936	Acres indicated
	Acres	*Acres*	*Per cent*	*Acres*
Maine	1,050	*1,150		
New York	7,740	*8,400	103.9	12,160
Pennsylvania	1,800	*2,150		
Indiana	3,500	1,300		
Michigan	5,000	5,700	106.0	14,100
Wisconsin	6,500	*6,300		
Delaware	1,000	900		
Maryland	10,000	10,000	107.9	12,300
South Carolina	350	500		
Tennessee	1,200	*2,300		
Mississippi	1,540	1,800	89.5	6,800
Arkansas	1,800	*2,600		
Louisiana	580	*900		
Colorado	1,180	900		
Utah	600	700		
Washington	850	770	110.9	5,090
Oregon	1,160	1,340		
California	540	880		
Other States	5,340	*7,320	103.8	7,600
Total	51,730	*55,910	103.8	58,050

* Revised.

"Other States" include Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Texas, Vermont, Virginia, and Wyoming. Also New Hampshire (1934-1935).

Sweet Corn

A slight increase in the acreage of sweet corn for canning in 1937 is indicated by information based on reports from 187 representative canners stating their intentions to contract or plant sweet corn acreage. If the plans of these canners can be assumed to be typical of the acreage intentions of all sweet corn canners, and if these plans materialize, a total acreage of 450,720 acres may be planted this year. The planted acreage estimated for 1936 was 444,370 acres; 1935, 418,990 acres; 1934, 323,590 acres, and 1933, 208,440 acres.

Abandonment of acreage as a result of unfavorable weather and growing conditions during recent years has varied widely. The abandonment in 1932 was 1.0 per cent and in 1936, when widespread drought occurred in all important sweet corn producing States, a loss of 16.1 per cent was estimated. Average loss or abandonment of planted acreage for the 7-year (1930-36) period was 6.7 per cent.

If an average abandonment of planted acreage of 6.7 per cent is assumed for 1937, a planting of 450,720 acres would result in an acreage of about 420,500 acres for harvest. The production probabilities on a harvested acreage of this size would range about as follows: a yield of 2.34 tons such as was obtained under favorable conditions of 1932, would produce about 984,000 tons, and a yield of 1.63 tons obtained under relatively unfavorable conditions such as prevailed in 1936, might produce about 685,000 tons. If, however, average conditions prevail through the 1937 growing season, and an average yield of about 2.0 tons per acre is secured, the production may be around 841,000 tons.

Judging by past relationships between production and size of pack, an above-average production of 984,000 tons would indicate a pack of 24,000,000 cases containing 24 No. 2 cans; a below-average crop of 685,000 tons can be expected to pack about 16,000,000 cases, and under average growing conditions, a production of 841,000 tons would pack about 20,000,000 cases. The pack for 1936 was about 14,600,000 cases containing 24 No. 2 cans.

The following table shows, by groups of States, the acreages which would result if the late March intentions to contract and plant acreages in 1937, as expressed by representative canners, are carried out.

State	Planted Acreage		Intended in 1937	
	1935	1936	As per cent of 1936	Acres indicated
	Acres	*Acres*	*Per cent*	*Acres*
Maine	15,820	16,390		
New Hampshire	1,000	830		
Vermont	1,240	1,350	102.8	54,040
New York	22,000	25,900		
Pennsylvania	6,750	8,100		
Ohio	27,100	27,300		
Indiana	50,000	54,000		
Illinois	93,000	97,000		
Michigan	8,400	8,460	99.9	340,600
Wisconsin	18,000	*22,600		
Minnesota	67,200	76,600		
Iowa	50,000	50,000		
Nebraska	6,600	4,900		
Delaware	2,800	3,550		
Maryland	34,500	34,000	108.1	43,300
Tennessee	3,100	*2,500		
Other States	11,480	*10,890	117.4	12,780
Total	418,990	*444,370	101.4	450,720

* Revised.

"Other States" include Colorado, Idaho, Kansas, Montana, Oklahoma, Oregon, Texas, Virginia, Washington, and Wyoming.

DEFINITION OF AGRICULTURAL LABOR

Internal Revenue Bureau Amplifies Regulations Under the Social Security Act

As the result of requests for advice concerning the scope of the term "agricultural labor" as used in the Social Security Act, and in Regulations 90 and 91 of the Bureau of Internal Revenue governing the payment of taxes under the Unemployment Compensation and Old-Age Benefits provisions of the Act, the Bureau has amplified the regulations.

Regulations 90 and 91, it will be recalled, were reviewed last year in a series of articles in the INFORMATION LETTER,

and these articles were summarized in the bulletin "Supplementary Survey of the Social Security Program," which was distributed at the 1937 annual convention. The Bureau's amplified ruling follows.

Advice is requested concerning the scope of the term "agricultural labor" as used in Sections 811(b)1 and 907(c)1 of the Social Security Act and Articles 6 and 206(1) of Regulations 91 and 90, respectively.

Section 811, Title VIII of the Act, provides in part as follows:

> * * * When used in this title—
>
> * * * * * * * * * *
>
> (b) The term "employment" means any service, of whatever nature, performed within the United States by an employee for his employer, except—
>
> (1) Agricultural labor * * *.

The provisions of Section 907(c)1, Title IX, and Section 811(b)1, Title VIII, are identical.

Article 6 of Regulations 91, relating to Title VIII of the Act, reads in part as follows:

> * * * *Agricultural labor.*—The term "agricultural labor" includes all services performed—
>
> (a) By an employee, on a farm, in connection with the cultivation of the soil, the raising and harvesting of crops, or the raising, feeding, or management of livestock, bees, and poultry; or
>
> (b) By an employee in connection with the processing of articles from materials which were produced on a farm; also the packing, packaging, transportation, or marketing of those materials or articles. Such services do not constitute agricultural labor, however, unless they are performed by an employee of the owner or tenant of the farm on which the materials in their raw or natural state were produced, and unless such processing, packing, packaging, transportation, or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations.
>
> As used herein the term "farm" embraces the farm in the ordinarily accepted sense, and includes stock, dairy, poultry, fruit, and truck farms, plantations, ranches, ranges, and orchards.

Subdivisions (a) and (b) of Article 206(1) of Regulations 90, relating to Title IX of the Act, are substantially the same as the above-quoted subdivisions of Article 6, Regulations 91.

The services contemplated in subdivision (a) of the aforementioned articles include:

(1) Services which are performed on a farm by an employee of the tenant thereof, or of the owner of such farm (whether or not in possession), *directly* in connection with the cultivation of the soil, the raising and harvesting of crops, or the raising, feeding, or management of livestock, bees, and poultry. An illustration of such service is the manual labor involved in carrying on any such activity.

(2) Services performed on a farm by an employee of the tenant thereof, or of the owner of such farm (whether or not in possession), which, although not performed directly in connection with the cultivation of the soil, the raising or harvesting of crops, or the raising, feeding, or management of livestock, etc., are nevertheless performed as an incidental and necessary adjunct to such activities; that is, they are necessary in the sense that they are essential for the proper carrying on of such activities, and are incidental in the sense that both their duration and character are such as to constitute their performance a subordinate and minor part of such activities. Examples of such services are the labor involved in hedging, ditching, and the repair of fences on the farm.

To the extent that an individual, such as a farm manager or superintendent, is engaged in the direct performance or supervision of services which of themselves constitute "agricultural labor" such individual is also considered to be engaged in "agricultural labor," provided he is an employee of the owner or tenant of the farm with respect to which his services are performed.

Where the nature of this service is such that it might properly be said of the individual performing it that he is pursuing a special trade, calling, or occupation not closely connected with agriculture, the service does not constitute "agricultural labor," even though the service may be performed on a farm by an employee of the owner or tenant thereof. Typical of such services are those performed by a bookkeeper, stenographer, carpenter, mechanic, or engineer. Services of this nature are not agricultural even though pertaining to agricultural pursuits.

The services referred to in subdivision (b) of Articles 6 and 206(1) of Regulations 91 and 90, respectively, do not embrace all services performed by an employee in connection with the processing of articles from materials which were produced on a farm, or in connection with the packing, packaging, transportation, or marketing of those materials or articles, even though such services are performed by the employee of the owner or tenant of the farm upon which the materials or articles in their raw or natural state were produced. As stated in S.S.T. 10 (3LW 1152), the fact that an individual is engaged in handling farm products does not of itself make the services performed by him "agricultural." Services are often performed by employees in connection with the processing, packing, or other handling of farm products, which are not a part of the ordinary farming operations but a part of manufacturing or commercial operations. Likewise, services are often performed in connection with the processing, packing, or other handling of farm products, which services even though they are performed by an employee of the owner or tenant of the farm on which the products in their raw or natural state were produced, do not constitute "agricultural labor" for the reason that they are rendered in the pursuit of a special trade, calling or occupation not agricultural.

The question whether the processing, packing, packaging, transportation, or marketing of farm products is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations is necessarily dependent upon the facts in the particular case with respect to which the question arises. The nature of the question does not permit of the adoption of a general rule which is controlling under all circumstances, but the following factors, while not all-inclusive, will be taken into consideration as indicating that the services in question constitute "agricultural labor."

(1) The same employees who perform services in connection with admittedly agricultural activities (that is, those activities contemplated in subdivision (a) of Article 6 of Regulations 91 and the corresponding subdivision of Article 206(1) of Regulations 90) also perform services in connection with the handling of the farm products (that is, those activities referred to in subdivision (b) of the aforementioned articles).

(2) The equipment used and the methods employed in handling the farm products are dissimilar to the equipment and methods used in like operations by persons admittedly engaged in commercial or manufacturing operations.

(3) The employer handles products produced on his own farm exclusively.

(4) The place where the handling is carried on is located on the farm.

(5) The product handled is sold exclusively at wholesale.

(6) It is the general custom and practice in the particular type of farming with respect to which the question arises to perform the handling operations in question.

(7) The capital invested in the equipment used in handling the products does not constitute the greater part of the investment in the enterprise as a whole.

No one of the conditions specified is conclusive but each is a factor in determining whether in a particular case the processing, packing, packaging, transportation, or marketing of farm products is carried on as an incident to ordinary farming operations or whether such activity is a part of a manufacturing or commercial operation.

If an employee during certain periods renders services which constitute "agricultural labor" and during other periods renders services which constitute "employment" within the meaning of that term as defined in the taxing provisions of the Act, and the period of time devoted to each type of service is substantial, the services which constitute "agricultural labor" must be segregated from the services which constitute "employment" on the basis of the time during which each type of service is rendered. If, in such a case, the agricultural services can not be so segregated, the entire services must be considered as "employment." Thus, if an employee concurrently performs services which, if separate and distinct as to time of performance, would constitute "agricultural labor," and other services which constitute "employment," the entire services must be classified as "employment."

Where, however, an employee during certain periods renders services which constitute "agricultural labor" and during other periods renders services which constitute "employment," and one type of service is merely incidental in measure of time to the other, then, even though it is possible to segregate the one type of service from the other, the incidental service may be disregarded in determining whether the employee is engaged in "agricultural labor." Thus, if an individual employed on a farm is engaged principally in repairing farm machinery and equipment but incidentally engaged in the performance of services in connection with the cultivation of the soil, his entire services may be treated as having been performed in "employment," the incidental agricultural services being disregarded. On the other hand, if an individual employed on a farm is engaged principally in the performance of services in connection with the cultivation of the soil but incidentally repairs farm machinery and equipment, his entire services may be treated as "agricultural labor," the incidental nonagricultural services being disregarded. No fixed rule can be laid down for the determination of what constitutes incidental services for this purpose, but any reasonable conclusion reached by the employer in that regard will not be disturbed.

CONGRESS SUMMARY

Legislation Moves Slowly—Amendment of Walsh-Healey Act Proposed

Continuance of hearings by the Senate Judiciary Committee on the judicial reform bill, discussion resulting from the Supreme Court's decisions on the National Labor Relations Act cases, and the House debate on the Gavagan anti-lynching bill served to keep Congress at a slow pace during the past week.

The House passed the Gavagan bill on April 15th. The day before, the House interrupted the lynching bill debate long enough to pass the long and short haul bill, which would amend the Interstate Commerce Act by permitting the rail carriers to charge, under certain conditions, a lesser rate for a long haul than the aggregate of the intermediate rates. On April 12th the House approved the Conference Committee report on the Guffey-Vinson coal bill and sent the measure to the White House.

Senator Walsh and Representative Healey, authors of the Government Contracts Act, introduced on Thursday companion bills (S.2165 and H.R. 6449) to amend the Act. The proposed amendment would broaden the scope of the Act by reducing the contract exemption to $2,500 and by requiring dealers to certify that goods sold by them to the Government were produced in conformity with the Act's provisions.

On April 9th the Senate adopted a resolution directing the Commissioner of Fisheries to make a survey of the effect of the Bonneville Dam on the passage and propagation of salmon and to make recommendations with respect to the steps necessary to attain full conservation and preservation of the Columbia River salmon fishing industry.

Chairman Doughton of the House Ways and Means Committee submitted on April 15th a favorable report from that Committee on his bill to repeal from the income tax law the sub-section which requires corporations to report the names of officers and employees receiving compensation in excess of $15,000 per year and the submission to Congress of an annual report by the Secretary of the Treasury containing the names of, and amounts paid to, each such officer or employee.

Hearings have been scheduled by a subcommittee of the House Judiciary Committee for May 10th on Representative Patman's bill (H.R. 4726) to discourage reciprocal sales by amending the Clayton Act. The measure would prohibit sales of commodities and contracts for furnishing services on the condition that the vendor or the one furnishing the services will buy commodities or receive services from the vendee or the receiver of the services when such an agreement would substantially lessen competition or tend to create a monopoly.

Upon introducing the bill to amend the Government Contracts Act Senator Walsh had printed in the Congressional Record the following statement explaining the scope of the proposal.

"This bill is designed to reinforce and clarify the basic labor principles enunciated by Congress in the passage of the Walsh-Healey Public Contracts Act of 1936. The principal changes contemplated by this bill are the extension of the scope of the act to all contracts in excess of $2,500 (the present limit is $10,000) and contracts for services as well as supplies; to place on the ineligible list bidders persistently remaining in violation of the National Labor Relations Act; and to require bids by dealers to contain certificates that the goods were manufactured in accordance with the labor conditions of the act.

"Under this bill the wage, hour, child-labor, and convict-labor conditions remain substantially the same. Certain administrative difficulties which have arisen under the minimum-wage section and application of the safety and sanitary sections to industrial home work, however, are corrected by clarifying language. Provision is also made for preserving the basic 40-hour week by permitting contractors to allow for compensatory time off within a week for days in which

their operations lasted for more than 8 hours without payment of additional overtime provided that the aggregate number of hours for the week does not exceed 40. The other amendments are chiefly of a technical character designed to clarify and retain the administrative practice which has developed under the regulations of the Department of Labor with respect to the present law."

Among other measures introduced was Senate Resolution 117, by Senator Schwellenbach, which would create a special Senate Committee of five members who would be authorized and directed to investigate all matters pertaining to the replacement, conservation, and proper utilization of aquatic life of the United States, its Territories, and waters adjacent thereto, with a view to determining the most appropriate methods for carrying out such purposes.

Chairman Jones of the House Committee on Agriculture has prepared a crop insurance bill that is reported to be very similar to the Pope bill which passed the Senate several weeks ago. It is understood that the bill when introduced will contain provisions for the inclusion of corn, cotton, and other crops within the insurance provisions of the bill whenever sufficient data has been compiled to form an actuarial basis.

Cold Storage Stocks

The following table shows the holdings of certain fruits and vegetables in cold storage reported by the Bureau of Agricultural Economics:

	Feb. 1, 1937	Mar. 1, 1937	Apr. 1, 1937
	1,000 lbs.	*1,000 lbs.*	*1,000 lbs.*
Frozen and preserved fruits:			
Strawberries	10,399	9,631	6,586
Blueberries	1,929	2,357	2,165
Cherries	9,052	8,039	6,398
Other fruits	42,230	35,798	33,009
Frozen vegetables:			
Peas	3,323	3,563	2,662
Beans, cut	1,056	1,184	1,097
Beans, lima	1,813	2,267	2,162
Corn	679	757	734
Spinach	379	355	369
Other vegetables	4,033	2,165	1,384

Indexes Relating to Sale of Canned Foods

The following indexes, taken from the published reports of the Bureau of Labor Statistics, indicate the recent changes in wholesale and retail prices. For retail prices they are based on the average for 1923-25 as 100 per cent, while for wholesale prices 1926 is taken as 100 per cent.

Wholesale Prices

	April 3 1937	Mar. 27 1937	Mar. 20 1937	Mar. 13 1937	Mar. 6 1937
All commodities	88.3	87.8	87.6	87.2	86.1
All foods	87.9	87.5	87.9	87.3	86.3

Retail Prices

	Mar. 16 1937	Feb. 16 1937	Jan. 12 1937	Mar. 10 1936
All foods	85.4	84.5	84.6	79.5
Fresh fruits and vegetables	80.1	77.7	73.5	60.5
Canned fruits and vegetables	82.6	82.2	81.8	78.5

DRAINED WEIGHTS OF PEARS

Canners Requested to Study Minimums Set in Proposed B.A.E. Standard

In the INFORMATION LETTER for July 18, 1936, attention was called to the "Tentative Standard for Canned Pears" issued by the Bureau of Agricultural Economics of the U. S. Department of Agriculture, under date of June 22, 1936. The statement was also made that copies of these tentative standards could be obtained on request to the Bureau of Agricultural Economics. It is suggested that pear canners who have not already done so secure a copy of these tentative standards and study them carefully in order that they may offer suggestions and criticism to Mr. Paul M. Williams, of the Bureau of Agricultural Economics.

Attention is particularly called to Table I given on page 6 of the mimeographed copy of the tentative standards referred to, in which a minimum drained weight of canned pears in different sizes of cans is given, as follows:

Can size	Can dimension	Minimum drained weight *Ounces*
8Z Short	211x300	5
8Z Tall	211x304	5½
No. 1 (Picnic)	211x400	7
No. 1 Tall	301x411	10½
No. 2	307x409	13½
No. 2½	401x411	20
No. 3	404x414	22½
No. 10	603x700	70
No. 10 water pack	603x700	76
No. 10 solid pack (pie)	603x700	92

Some canners have expressed the opinion that the weights given in the foregoing tabulation are not appropriate, and it is hoped that all pear canners will give the matter attention and make recommendations to the Bureau of Agricultural Economics in order that, when the tentative standards are made official, they will contain appropriate data.

AGREEMENT WITH ECUADOR

Dates Set for Submission of Views and Presentation of Oral Evidence

Public notice of intention to negotiate a trade agreement with Ecuador was given by the State Department on April 5th, and the Committee for Reciprocity Information has announced that all information and views in writing and all applications for supplemental oral presentation of views should be submitted not later than May 3rd. Supplemental oral statements will be heard at a public hearing beginning May 17th. Written statements and applications for opportunity to present oral statements should be addressed to the Committee for Reciprocity Information, Old Land Office Building, Eighth and E Streets, N. W., Washington, D. C.

In connection with the notice, the State Department has made public a list of articles on which concessions by the United States will be considered. Possible duty reductions will be considered on dried and preserved bananas, naranjilla juice, and hats or hoods made in chief value of toquilla

fiber or straw. Possible binding of present customs treatment will be considered on annatto, green or ripe bananas, cinchona barks, cocoa beans, coffee, kapok, reptile skins, vegetable ivory, and balsa wood and lumber.

Announcement of the articles on which concessions are to be considered is a departure from the earlier practice in negotiating reciprocal trade agreements, and serves to indicate to United States industry and trade the scope of the proposed agreement from the import point of view.

Cold Storage Holdings of Fishery Products

Cold storage holdings of fishery products in the United States on March 15th amounted to 51,645,000 pounds compared with 31,270,000 pounds on March 15, 1936, and the five-year average of 29,274,000 pounds, according to the U. S. Bureau of Fisheries. During the month ended March 15th, 4,143,000 pounds of fishery products were frozen compared with 5,138,000 pounds frozen in the corresponding period of 1936.

TRUCK CROP PROSPECTS

Summaries of Government Reports That Are of Interest to Canners

The following statements briefly review the current releases on the acreage and production of certain commercial truck crops as estimated by the U. S. Bureau of Agricultural Economics. Details by States are available in separate reports on each crop, any of which will be mailed upon request.

SNAP BEANS.—Preliminary estimates of snap bean acreage for three of the early States (California, Florida, and Texas) and the second early States (Alabama, Georgia, Louisiana, Mississippi, and South Carolina) show 46,880 acres for harvest during the next three months compared with 55,170 acres harvested in 1936, a decrease of 15 per cent. 20,800 acres are now being harvested in the three early States, this being 34 per cent less than the 31,500 acres harvested last spring. Although 18,500 acres of snap beans were planted in Florida, there remain but 8,000 acres for harvest due to the heavy acreage loss by rain damage. Acreage in the second early States, which will be ready for harvest the last of April or in May, is reported at 26,080 acres compared with 23,670 acres in 1936, an increase of 10 per cent. Production of the spring crop in the three early States is expected to be 29 per cent smaller than the 1936 production.

BEETS.—A production of 213,000 bushels of beets is forecast for the second early States (Louisiana and South Carolina) compared with 192,000 bushels last year, an increase of 11 per cent. The commercial table beet acreage in the second early group of States is 1,350 acres compared with 1,450 acres harvested in 1936, a decrease of 7 per cent. However, yields are expected to be higher than last year in Louisiana due to favorable spring weather conditions.

CABBAGE.—Production of cabbage in the second early States (Alabama, Georgia, Mississippi, North Carolina, South Carolina, and Virginia) is forecast at 98,900 tons this year compared with 92,100 tons in 1936, this being an increase of 7 per cent. Acreage is reported to be about 3 per cent greater than that in 1936 (18,800 compared with 18,300 acres in 1936) and yields per acre in all States are expected to be as high as a year ago or higher.

CARROTS.—This year 4,070,000 bushels of carrots are expected to be produced in the second early States—California (spring crop), Louisiana and Mississippi—or 29 per cent less than the 5,770,000 bushels produced in 1936. Both acreage and yield per acre are below the estimates for last year. However, the 10,060 acres for harvest this year are well above the 5-year (1928-32) average acreage and the April 1 estimated average yield of 405 bushels per acre is slightly above the 5-year (1928-32) average yield.

GREEN PEAS.—A production of 2,522,000 bushels of green peas is expected in the second early States (Alabama, California (other), Louisiana, Mississippi, South Carolina) this year. This is a decrease of 14 per cent below last year's crop of 2,944,000 bushels in these States and an increase of 16 per cent over the 5-year (1928-32) average production of 2,177,000 bushels. The estimated acreage is one-fifth smaller than that of a year ago, California and Louisiana reporting decreases which are partly offset by increases in Mississippi and South Carolina. Indicated yields per acre average slightly higher than the 1936 yields.

SPINACH.—Conditions as of April 1, indicate that the second early States (Arkansas, Illinois, Maryland, Missouri, New Jersey, Oklahoma, Pennsylvania, Virginia and Washington) will produce 3,069,000 bushels of spring-crop spinach this year compared with 2,404,000 bushels in 1936, an increase of 28 per cent. Due to the lateness of the season in some of these States the crop is barely through the ground in some areas which may necessitate a revision of this production forecast at a later date.

COMPLAINT AGAINST OYSTER EXCHANGE

Trade Commission Charges Canners With Maintaining Price-Fixing Agreement

Biloxi Oyster Exchange, of Biloxi, Miss., its officers and directors, and 24 member companies operating in six southern States, are charged in a complaint issued by the Federal Trade Commission with entering into and maintaining a price-fixing agreement which has resulted in lessening competition in the interstate sale and distribution of canned oysters. Fourteen of the companies have their headquarters in Mississippi, and the others in Louisiana, Alabama, Georgia, South Carolina and Florida.

Ernest Desporte, Jr., is president and general manager and Cary F. Goodman secretary-treasurer of the exchange. The exchange was organized in 1933, according to the complaint, for collecting and disseminating information for oyster canners and packers, operating a selling agency for the canned oysters processed by its members, selling canned oysters for its own account, and for the further purpose of putting into effect the acts and practices alleged in the complaint to constitute unfair competition in violation of Section 5 of the Federal Trade Commission Act.

Acting in cooperation with each other, and with Biloxi Oyster Exchange, and pursuant to their alleged agreement and for the purpose of maintaining it, the respondents are said to have engaged in the following practices:

(1) Fixing and maintaining throughout each season uniform sales prices, brokerage fees, discounts, label allowances, and terms and conditions under which they sell canned oysters to the trade; (2) permitting Biloxi Oyster Exchange to have access to their books and sales records; (3) furnishing the

exchange with weekly or other periodical statistical data, such as names and addresses of buyers, number of cases of oysters sold to each buyer, prices at which all sales were and are made, copies of all invoices of shipments and of bills of lading, and, other reports; and (4) regulating and curtailing the processing of oysters and the canning thereof, and arbitrarily limiting and restricting the seasons or periods within which the respondents obtain and pack oysters.

The complaint further alleges that Biloxi Oyster Exchange held meetings of the respondents to discuss and adopt plans, penalties and measures for making the alleged agreement effective; induced and attempted to induce certain member and non-member companies to raise their own prices or sell at the uniform prices fixed and quoted by the exchange and by the other respondents, and to become members of the exchange, and policed respondent companies by obtaining and disseminating information as to instances of deviation from, or cutting of, prices quoted by the exchange and the other respondents.

In addition to allegedly restricting competition, the effects of the respondents' agreement, the complaint charges, have tended to monopolize in the respondents the business of packing, dealing in and distributing canned oysters, and to deprive the purchasing public of the advantages in price, service and other considerations which they would receive under conditions of normal and unobstructed competition.

Fruit and Vegetable Market Competition

Carlot Shipments as Reported by the Bureau of Agricultural Economics, Department of Agriculture

	Week ending—			Season total to—	
VEGETABLES	Apr. 10 1936	Apr. 10 1937	Apr. 3 1937	Apr. 10 1936	Apr. 10 1937
Beans, snap and lima	172	260	237	4,436	5,523
Tomatoes	417	523	516	5,955	7,273
Green peas	130	102	126	1,244	1,915
Spinach	235	357	333	6,387	6,963
Others:					
Domestic, competing directly	5,515	5,615	4,845	76,275	81,339
Imports competing—					
Directly	35	20	44	974	693
Indirectly	19	35	27	1,818	1,620
FRUITS					
Citrus, domestic	3,646	2,823	3,767	76,713	94,214
Imports	19	4	2	448	106
Others, domestic	461	128	83	16,658	18,997

Report Issued on Meat Trade

A mimeographed report on "Meat Trade of the United States in 1936" has been issued by the Foodstuffs Division of the Bureau of Foreign and Domestic Commerce. The review is designed to furnish statistics on foreign trade in meat products, a brief summary of the recent changes in this commerce, and a background of the production and price situation for several years past. Copies of the report may be obtained from the Bureau of Foreign and Domestic Commerce in Washington, also from its district and cooperative offices.

FINDING THE ACTUAL FACTS

Association's Investigation Reveals Inaccuracy of Newspaper's Food Poisoning Story

In recent years the canning industry has had less cause than formerly to complain of inaccurate reports in newspapers reflecting unfavorably on the wholesomeness and safety of the industry's products, and this has been due, in no small measure, to the Association's speedy and comprehensive investigation of published reports on illnesses or deaths attributed to the eating of canned foods. The results of these investigations are always brought to the attention of the newspapers that publish the original stories, and this has served to impress upon them the need of adequate information before arriving at conclusions and their publication to the detriment of the industry.

A report of food poisoning recently published in an Eastern newspaper under the heading "One Dead, Five Ill from Canned Food" is an illustration of the type of story which is harmful to the canning industry and which, by the Association's method of thorough investigation, is shown to be inaccurate.

The peas to which the death and illnesses were attributed were eaten by members of two families and were home canned, which was not disclosed in the newspaper report.

Several persons who ate the peas were not made ill.

Two physicians who attended the family diagnosed the illness as food poisoning probably due to home-made ice cream.

Several persons who became ill had eaten only the ice cream, and members of the stricken families felt that this product was responsible.

The newspaper report that canned peas were responsible was apparently based solely on a physician's preliminary surmise without any adequate investigation.

Following the investigation a letter was written to the editor of the newspaper giving the results of the Association's investigation and calling his attention to the great injustice done to the canning industry by the publication of such a story without appropriate investigation.

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